

PC RESOLUTION NO. 16-020

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS
APPROVING A CONDITIONAL USE PERMIT (P-UP16-0005) TO ALLOW A VEHICLE
RENTAL USE WITHIN AN EXISTING COMMERCIAL BUILDING ON A 3.4 ACRE
SITE, LOCATED AT 156-166 SOUTH MILPITAS BOULEVARD, APN 086-28-030**

WHEREAS, on March 11, 2016, Jim Ewersen of Milpitas Boulevard, LLC, submitted an application to the City of Milpitas requesting a Conditional Use Permit to operate a vehicle rental service within an existing industrial building located at 155-166 S. Milpitas Blvd. (APN: 086-28-030); and

WHEREAS, the Zoning Designation for this site is Heavy Industrial (M2). Milpitas Municipal Code Table XI-10-7.02-1 requires conditional use permit review by the Planning Commission to allow vehicle sales and rental within the M2 zoning district; and

WHEREAS, the Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA), and recommends that the Planning Commission determine this project exempt under CEQA under both Section 15301 (Existing Facilities) of the CEQA Guidelines, insomuch as the project consists of a change in use within an existing industrial building into vehicle rental use; and Section 15303 (New Construction or Conversion of Small Structures), given the limited construction that will be necessary to establish the rental use; and

WHEREAS, on May 25, 2016, the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties.

NOW THEREFORE, the Planning Commission of the City of Milpitas hereby finds, determines and resolves as follows:

Section 1: The Planning Commission has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the Planning Commission. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

Section 2: The project is Categorically Exempt from further environmental review pursuant to both Section 15301 (Existing Facilities) of the CEQA Guidelines, insomuch as the consists of a change in use within an existing industrial building into vehicle rental use; and Section 15303 (New Construction or Conversion of Small Structures), given the limited construction necessary to establish the rental use.

Section 3: Conditional Use Permit (Section XI-10-57-04(F) - *The Planning Commission makes the following findings based on the evidence in the public record in support of Conditional Use Permit No. P-UP16-0005:*

- a) *The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety and general welfare;*

The proposed vehicle rental service will not be detrimental or injurious to properties or improvements in the vicinity because the use is fully contained in an industrial building and associated parking lot with adequate space for customers, employees and rental vehicles. All office work is conducted within the existing industrial building, and will not negatively impact the public health, safety, and general welfare of neighboring properties or improvements in the vicinity. The car rental service will operate a small fleet of no more than X vehicles so incoming and exiting traffic will be minimal along the lot entrance off of South Milpitas Boulevard.

- b) *The project is consistent with the Milpitas General Plan:*

The table below outlines the project's consistency with applicable General Plan Guiding Principles and Implementing Policies:

Policy	Consistency Finding
<i>2.a.I-11 – Encourage supportive and compatible commercial and office uses in industrial areas designated for those uses. In areas reserved for industrial uses, only limited ancillary and incidental commercial uses, such as small eating establishments, may be permitted when such are of a scale and design providing support only to the needs of businesses and their employees in the immediate industrial area.</i>	Consistent. The project offers a supportive and compatible commercial use, which is anticipated to primarily support the needs of Service King customers.
<i>2.a.I-7 – Provide opportunities to expand employment, participate in partnerships with local business to facilitate communication, and promote business retention.</i>	Consistent. The project would allow the opportunity for a local business to fulfill a need for the Milpitas community, while expanding employment opportunities.

- c) *The project is consistent with the Milpitas Zoning Ordinance:*

The proposed use meets this finding because vehicle rental use is allowed through the conditional use permit process. Staff has analyzed the project site and proposed use and determined the use would not be detrimental to the neighboring industrial properties and uses in the direct vicinity.

Section 4: The Planning Commission of the City of Milpitas hereby adopts **Resolution No. 16-020 recommending approval for Conditional Use Permit No. P-UP16-0005 subject to conditions of approval substantially similar to those included as Attachment A.**

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on May 25, 2016.

Chair

TO WIT:

I HEREBY CERTIFY that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on May 25, 2016, and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Sudhir Mandal				
Lawrence Ciardella				
Hon Lien				
Rajeev Madnawat				
Ray Maglalang				
Zeya Mohsin (Alternate)				
Demetress Morris				
Gurdev Sandhu				

EXHIBIT 1

**CONDITIONS OF APPROVAL
ENTERPRISE RENT-A-CAR,
CONDITIONAL USE PERMIT NO. UP16-0005**

General Conditions

1. General Compliance. The applicant, including all successors in interest (collectively “Permittee”) shall comply with each and every condition set forth in this Permit. This Conditional Use Permit No. UP16-0005 (“Permit”) shall have no force or effect and no building permit shall be issued unless and until all things required by the below-enumerated precedent conditions have been performed or caused to be performed and this Resolution has been recorded by the Permittee with the Santa Clara County’s Recorder Office and a copy shall be provided to the Planning Division.
2. Effective Date. Unless there is a timely appeal filed in accordance with the Milpitas Zoning Code, the date of approval of this Permit is the date on which the decision-making body approved this Permit.
3. Acceptance of Permit. Should Permittee fail to file a timely appeal within twelve (12) calendar days of the date of approval of this Permit, inaction by Permittee shall be deemed to constitute each of the following:
 - a. Acceptance of this Permit by Permittee; and
 - b. Agreement by the Permittee to be bound by, comply with, and to do all things required of or by Permittee pursuant to all of the terms, obligations, and conditions of this Permit.
4. Permit Expiration. Pursuant to Section XI-10-64-06 of the Milpitas Zoning Code, this Permit shall become null and void if the activity permitted by this Permit is not commenced within two (2) years from the date of approval, or for a project submitted with a tentative map, within the time limits of the approved tentative map. Pursuant to Section XI-10-64.06(B) of the Milpitas Zoning Code, an activity permitted by this Permit shall be deemed to have commenced when the project:
 - a. Completes a foundation associated with the project; or
 - b. Dedicates any land or easement as required from the zoning action; or
 - c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.
5. Time Extension. Pursuant to Section XI-10-64.07 of the Milpitas Zoning Code, unless otherwise provided by State law, Permittee shall have the right to request a one-time extension

of the Permit if the request is made in writing to the Planning Division prior to the expiration date of the approval. **(P)**

6. Project Job Account. If Permittee's project job account is at any time delinquent or below the required deposit amount, City will not continue to review or process the application until Permittee's private job account is paid in full and the required deposit has been made. Additionally, prior to the issuance of any building permit or occupancy permit, as applicable, Permittee shall pay in full the project account balance and establish a remaining balance of at least twenty-five percent (25%) of the required initial deposit.
7. Notice. Pursuant to California Government Code Section 66020, any protest filed in court relating to the imposition of fees, dedication, reservations, or other exactions to be imposed on the development project shall be filed within ninety (90) days after the date of the adoption of this Resolution. This provision serves as notice from the local agency to the Permittee that the ninety (90) day period in which the applicant may file a protest has begun under California Government Code Section 66020(d)(1).
8. Cost and Approval. Permittee shall fully complete and satisfy each and every condition set forth in this Resolution and any other condition applicable to the project to the sole satisfaction of the City. Additionally, Permittee shall be solely responsible and liable for the cost to satisfy each and every condition.
9. Conditions. Each and every condition set forth in this Exhibit shall apply to the project and continue to apply to the project so long as the Permittee is operating the project under the permits and approvals in this Resolution.
10. Compliance with Laws. The construction, use, and all related activity authorized under this Permit shall comply with all applicable local, state, and federal laws, rules, regulations, guidelines, requirements, and policies. **(CA/P)**
11. Previous Approvals. Permittee shall abide and continue to comply with all previous City approvals, permits, or requirements relating to the subject property, unless explicitly superseded or revised by this Permit.
12. Indemnification. To the fullest extent permitted by law, Permittee shall indemnify, defend with counsel of the City's choosing, and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to (i) City's approval of the project, including but not limited to, the approval of the discretionary permits, maps under the Subdivision Map Act, and/or the City's related determinations or actions under the California Environmental Quality

Act, and (ii) Permittee's construction, operation, use, or related activity under this Permit. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. Permittee shall indemnify the City for all of City's costs, attorneys' fees, and damages that City incurs in enforcing the indemnification provisions set forth in this condition. Permittee shall pay to the City upon demand or, as applicable, to counsel of City's choosing, any amount owed pursuant to the indemnification requirements prescribed in this condition.

13. Revocation, Suspension, Modification. This Permit may be suspended, revoked, or modified in accordance with Section XI-10-63.06 of the Milpitas Zoning Code.
14. Severability. If any term, provision, or condition of this Permit is held to be illegal or unenforceable by the Court, such term, provision, or condition shall be severed and shall be inoperative, and the remainder of this Permit shall remain operative, binding, and fully enforceable.
15. Permittee shall develop the approved project in conformance with the plans approved by the Planning Commission on May 25, 2016, in accordance with these Conditions of Approval.

Any deviation from the approved site plan, elevations, materials, colors, landscape plan, or other approved submittal shall require that, prior to the issuance of building permits, the Permittee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the Planning Commission or City Council, as applicable, in accordance with the Milpitas Zoning Code. **(P)**

16. Written Response to Conditions. The Permittee shall provide a written response to the Conditions of Approval indicating how each condition has been addressed with the building permit application at the time of first submittal. **(ALL)**
17. Rental Car Fleet. In order to ensure adequate parking, Permittee shall maintain no more than ten rental vehicles at the site. **(P)**
18. Shared Parking. Permittee shall enter into and maintain a shared parking agreement documenting Permittee's right to use at least ten parking spaces at the project site. **(P)**
19. Compliance with Fire Department and California Fire Code. Permittee shall comply with the requirements of the Milpitas Fire Department and the California Fire Code as adopted and amended by the City. Changes to the site plan and/or building(s) requires review and approval by the Fire Department. **(F)**

20. Compliance with Building Department and California Building Code. Permittee shall comply with the requirements of the Milpitas Building Department and the California Building Code as adopted and amended by the City. Changes to the site plan and/or building(s) requires review and approval by the Building Department. **(B)**

(P) = Planning

(B) = Building

(E) = Engineering

(F) = Fire Prevention

(CA) = City Attorney